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seized a new instrument, which Bach has written for in a peculiar style, with double notes and passages of such difficult intonation, that modern violin players quail before them; and even with the violin in his hand, he appeared as great as he had been on the organ. He was possessed with one idea—that here was extraordinary music, requiring to be interpreted, and that he was the man to do it. The new and most uncommon strain of Bach's musical thoughts did, in fact, make their first great impression in England through the example of Wesley. Other musical natures vibrated in unison with that of this sensitive and impassioned man; it was impossible to see him so moved and not sympathize. These passages carry us back far into the romance of memory; and though in the last five-and-twenty years it has been our good fortune to be personally acquainted with the most eminent German and English composers, we have never found, in certain points, the equal of Samuel Wesley. His whole soul was music; he was the unsophisticated child of nature, of warm affections and impulse. Had he perceived less keenly, or felt less warmly, he might have preserved himself from many of the errors which chequered his career. Still he was the first great devotee of the unpopular Bach in England; as such we remember him well with a hearty benison to his memory, and gratitude for his musical example, for he was essentially a gentleman, kind, affectionate, and encouraging to young musicians.

To appreciate the singleness of purpose in Wesley with regard to Sebastian Bach, one should be a little behind the curtain in musical matters, and witness the hesitation and debate through which new and difficult music usually makes its approach to a public hearing, amidst a thousand fears and misgivings that it will not be liked, that it will create no effect, &c. Calculations such as these may astonish a man who owns and feels the beautiful; nevertheless, they abound in a mercenary age, in which many are willing to "swell the triumph and partake the gale" of popularity, but few to stem the torrent of adverse opinion, or to risk any of the penalties of failure.

Mendelssohn's first appearance, about 1830, confirmed the justice of Wesley's prepossessions, and did for Bach in a short time, through the graceful powers of execution which the youthful master exhibited, more than all our old organists had been able to accomplish in a series of years.

Bach had now many ovations. He was introduced—a little against the grain, it must be confessed—at the Philharmonic Concert, and his triple concerto for the harpsichord played by Mendelssohn, Moscheles, and Thalberg, gained enthusiastic applause. His sonatas for the pianoforte and violin were sometimes brought forward at classical concerts by the best artists. Shortly

afterwards, we received from Germany carefully corrected editions of *all* his pianoforte and organ works, forming many volumes, of which poor Sam Wesley never heard a note; but which, nevertheless are full of associations with him, and the pleasure he diffused.

The talk in England was still of Bach—how that besides being the father of our modern instrumental art, he had written more vocal music than any other musician—masses, oratorios, cantatas, with orchestral accompaniments, supplying two full Sunday services for every Lutheran Sunday in the year. The great score of the *Passion according to St. Matthew*, was the first of these which reached England, and that is still to be heard. It is intended, we hear, to attempt some part of it at the next Norwich festival. It will certainly do for no other than a thorough practising society like Mr. Hullah's. The first chorus on the choral, *O Lamm Gottes unschuldig*, is of these enormous dimensions—besides two choruses, in harmony of four parts each, it has another full chorus in unison of treble voices for the *canto fermo*. That Bach himself never realized this sublime design in anything like its true proportions—possibly with the ears of the imagination only—is quite certain. Beyond any musician, he lived remote, and in the futurity of his art. He held in abomination everything common, and that pleased the profane vulgar; and though of a benevolent and urbane disposition, he could never condescend in his music. When he spoke of the Italian Opera, which was conducted in splendour by his friend Hasse, at Dresden, it was sometimes in such terms as these, addressing his eldest son, and inviting him to a holiday excursion:—'Friedman, shall we go out, and hear *some of the pretty Dresden tunes?*' And yet Bach was on terms of intimate friendship with Hasse and his wife, the celebrated singer Faustina. What a change has taken place! The 'divine' Hasse, as he was once generally called, is now placed in the gallery of musical antiques; while the recluse, and almost obscure Bach, is entering upon a great course of posthumous existence.—From "*Our Musical Spring*" in *Fraser's Magazine*.

#### EXCHEQUER CHAMBER.—TUESDAY, MAY 20.

[*Before Lord Campbell and the Judges of the Courts of Queen's Bench and Common Pleas, in Errors from the Court of Exchequer.*]

BOOSEY v. JEFFERYS. — COPYRIGHT. — JUDGMENT. — A FOREIGNER RESIDENT ABROAD MAY ASSIGN COPYRIGHT TO A BRITISH SUBJECT FOR FIRST PUBLICATION.

Lord Campbell now delivered the judgment of the court. This was an action for pirating and using a musical composition entitled a cavatina from the opera of *La Sonnambula*, of Bellini. The declaration, which was in the common form, alleged that this composition was first published in England within twenty-eight years; that the

plaintiff was the proprietor of the copyright therein, and that the said copyright was subsisting at the time when the grievance set forth in the declaration was committed. To that declaration the defendant pleaded, first, that the plaintiff was not the proprietor of the copyright in the declaration mentioned; and, secondly, that at the time of the committing of the said supposed grievance, copyright did not subsist in the said composition. At the trial before Lord Cranworth, then Mr. Baron Rolfe, evidence was adduced to show that the opera of *La Sonnambula* was composed by Bellini, an alien, at Milan, in February, 1831; that Bellini then resided at Milan; that he was by the law of Milan entitled to the copyright in the opera, and to assign that right to any one he pleased; that on the 19th of February, 1831, by an instrument in writing, framed in accordance with the law of Milan, he assigned the copyright in the work to Giovanni Ricordi, also an alien, and resident at Milan; and that Ricordi thereupon became vested with the said copyright; that on the 9th of June, 1831, Ricordi, in England, duly made, signed, and sealed, and attested by two witnesses, an indenture between him and the plaintiff, whereby, for a valuable consideration, he assigned to the plaintiff, a native born subject of Great Britain, the right to publish the opera in Great Britain and Ireland; that the plaintiff published it on the 10th of June, 1831, in London; that there had been no prior publication of the opera either within the British dominions or in any other country; that he made the usual entry at Stationers' Hall, and deposited copies of the publication at the British Museum, and other places as required by law; and that on the 13th of May, 1844, he caused a further entry thereof to be made at Stationers' Hall, under the 5th and 6th Vic., c. 45. The learned judge, in conformity with the opinion of the Court of Exchequer, in the case of *Boosey v. Purday*," ruled that the evidence was not sufficient on the issues joined, and his lordship directed the jury to find on both issues for the defendant. To that ruling a bill of exception was tendered, on which the present writ of error was brought. After listening to the very learned argument, and looking into the authorities on the subject, the court were all of opinion that the evidence was sufficient to entitle the plaintiff to a verdict on both issues; that the direction of the learned judge was erroneous, and that there must be a *venire de novo*. The first question discussed was, whether an author possessed a copyright in his works at common law. That was not essential to the determination of the present case; but, supposing that it were, the court were strongly inclined to concur in the declaration of Lord Mansfield and other judges, in favour of the common law right of authors. But the court rested their judgment on the statutes with respect to literary property, which, in their opinion, and according to the evidence adduced at the trial, entitled the plaintiff to maintain this action. The court saw no sufficient reason for thinking that it was the intention of the legislature to exclude foreigners from the benefits of the statutes. The British parliament has no power to legislate for aliens beyond the British territory, but within the limits of that territory it has the power, and the court conceived that the general words must be presumed to do so. The monopoly which the statutes conferred is to be enjoyed here, and the conditions for the enjoyment of it are to be presumed here. What was there to rebut the presumption that aliens are entitled? The statute 8th Anne, c. 19, is for the encouragement of learning, by vesting the right in printed books in the authors thereof. Assuming that the legislature intended this necessarily for the encouragement of learning in Great Britain; might it not be for the encouragement of learning that foreigners should be induced to send their works here to be first published? If Rapsin and De Lolme had written their valuable works on our constitution on the continent, without visiting this country, instead of first publishing them as they had done in England, was it to be contended that

they would thereby have been debarred from assigning their property in these works to an Englishman? It would ill become them, sitting on that bench, to express any opinion upon the policy of introducing agricultural produce or manufactures from foreign countries; but looking at the statute book, he might without any impropriety observe that it had been the uniform policy of parliament to facilitate the introduction of learning and literature from other countries. Although printing had been introduced and carried on by Caxton in the reign of Edward IV., in the statute 1 Richard III., c. 9, to restrain Italians and other foreigners from carrying on trade here, and to protect our woollen manufactures, a proviso was made by the 12th section that that act should not extend to prevent any merchant or trader, of whatever nation he might be, from bringing into this country any books, written or printed. The real question was, whether a foreigner, by sending his work to a publisher here, could acquire a copyright in it. Upon that question depended his right to assign to another. It was admitted that if a foreigner composed his work here he might acquire a copyright in it, and the learned counsel for the defendant would not deny that if a foreigner while living here for a temporary purpose wrote a poem, he might publish it and acquire a copyright in it here. If he had composed it in his own country, and brought it over in his memory and produced it here for the first time, or if he had written out a book in manuscript, would it have made any difference as to his rights? Could his personal appearance within our realm be essential to his right as an author, if he did that by an agent which it was not disputed he might do in his own proper person. The right which he had in England was the right of acquiring a monopoly for a certain number of years for the sale of his work. That right was incorporeal, and in the nature of personal property which he carried with him wherever he went, and all that was to be done to negotiate it he might do by another. Where, then, was the necessity of crossing from Paris to Dover before giving instructions for the publication of his work, and entering it at Stationers' Hall? The law of England afforded protection, and would give the foreigner redress for any wrong which might be inflicted on him here. In the sixth year of Henry VIII. the Court of Common Pleas held that an alien residing in France might maintain an action of debt here, but not in the case of real property, for an alien could hold no land. In another case it was held that an alien, although he had never been in this country, might maintain an action for an injury to his reputation contained in a libel; and that great judge, the late Chief Justice Tindal, remarked that it would create in foreigners an unfavourable opinion of our laws if we held that aliens could not maintain an action of this description. And Mr. Justice Maule also pointed to the fact of our courts going further in allowing actions to be brought by foreigners for running down ships upon the high seas. If Mr. Gibbon, after writing the concluding volume of his work at Lausanne, had published it there, could it be doubted that while domiciled there, he could, having caused his work to be published in London, acquire the same right as an English author? For such a purpose what difference could it make whether the author were an alien or a natural born subject. In the present case, he presumed it would be admitted that if Bellini had never come to London, the defence would have been done away with if he had been naturalised by act of parliament. For these reasons the court thought that if an alien residing in his own country were to compose a literary work there, without publishing his work, but should cause it to be published in this country, he would be an author for the encouragement of learning, and might maintain an action against any one who should pirate his work. He wished to be understood always to speak of the rights of foreigners who first published their works in England. If a literary work is once published,

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an author can only claim a copyright by the law of the country in which it is first published. That was the doctrine of our courts, and the legislature might be considered as having adopted and sanctioned it by the enactment of the two recent international copyright acts. The learned counsel for the defendant contended that though an alien residing abroad might publish here, he could not transfer the right to another; but if by the law of a foreign country in which he resides the right may be assigned to a publisher with a right of again assigning, the assignee of the author, or his assignee, becomes the owner of the property. It consisted in the right of retaining a monopoly for the sale of a work in the country in which it was first published. Whatever right the author of this work had of publishing in England was transferred by him to Ricordi, and by Ricordi to the plaintiff. His lordship having referred in detail to the authorities cited in the course of the argument, observed that he was perhaps justified in saying that these cases were rather in favour of the doctrine now supported by this court. In the *Exchequer*, a case decided by Vice-Chancellor Shadwell was relied on, in which his Honour had observed that the court would not protect the copyright of a foreigner. But the point in that case had nothing bearing on the present question, it being for an infringement of a design for seals and labels; and in a subsequent case—"Bentley v. Simons" (as we understood)—his Honour adopted the view now taken by the court. One other point only remained. It was contended on behalf of the defendant that there was not in the evidence any valid assignment to Ricordi, there being no allegation that it was attested by two witnesses. Looking at the assignment in the bill of exceptions, it might be presumed that there was such an assignment executed as was sufficient. At all events, the court thought the title sufficient, upon the statement that Bellini assigned to Ricordi according to the law of Milan. This was not like a conveyance of real property in England, or an assignment of personalty in England, which might be attested in a particular form. When the assignment was made, it had no reference to England, and it was merely sufficient to clothe Ricordi with all the rights of property in the opera of *La Sonnambula*. The assignment by Ricordi to the plaintiff was made according to all the forms of English law. Upon the whole, the court thought the learned judge ought to have directed the jury that if they believed the evidence they should find a verdict on both issues for the plaintiff. There must, therefore, be a *venire de novo*.

### Correspondence.

#### THE MENDELSSOHN SCHOLARSHIPS.

To the Editor of the "Musical Times."

SIR,—At page 99 of the Third Volume of your valuable work, I find the following notice relating to the above:—"That a proportion of the scholarships shall always be held by natives of the United Kingdom; and that a part of the sum collected shall be devoted to the endowment of preparatory scholarships in the Conservatory of Leipsic, reserved for the natives of the United Kingdom, to qualify them for competition for the Mendelssohn Scholarship."

Now, from very good authority, I learn that nothing has yet been done, or, if anything, it still remains in the dark. That a large sum of money was collected from various sources to erect some fitting monument to the memory of the great departed genius. \* \* \*

I, for one, would compete for a scholarship-preparatory, and try to follow in the steps of the man to whose genius I might be indebted for my learning. I trust, Sir, if I am in error you will be so kind as to inform me on what

point, as also, if the scholarship is established, the right place to make application for particulars. I most sincerely hope it is not to be managed in the style of the *Reid Legacy*—a notice of which (copied from the *Athenæum*) appears at page 133, Vol. III. of your work.

Trusting you will oblige me with an answer in your next publication, I remain, Sir, your obedient servant,

AN ADMIRER OF MENDELSSOHN.

Friday, May 9th, 1851.

[We regret that the information we are able to give at the present moment, with regard to the intended Mendelssohn Scholarships, is but scanty. To a final decision the British Committee have not yet come, having hitherto been suspended by the little progress which the Leipsic Committee has made. The British Committee has not felt itself authorized to dispose of the funds entrusted to its care until after the statutes of the foundation should have been confirmed by its Royal patron and protector, the King of Saxony; and this confirmation is still waited for, delayed as it appears by the state of German affairs. Meanwhile, the funds (the produce of the performance of *Elijah*) fructify at the Bank of England.—Ed. M. T.]

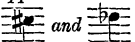
### TO CORRESPONDENTS.

We have to thank our friend Mr. Simpson, of Dundee, for his public recommendation of our journal.

E. C., City.—We have been promised, by a friend, some biographical particulars of the composer Curschman, which shall be published as soon as obtained.

LEO.—If you will call at our publisher's, you will find that the *Berlin Choir Music* was published at the time it was announced.

G. C. T., Brixton.—The *Kyrie*, from Haydn's *Seventh Mass*,

MERCATOR should shew his *Violin* to some good dealer, who would give him the best opinion on it. The word "Enharmonic change," is applied to the difference existing between two notes, say  but for which, on the piano and other fixed instruments, the same sound is used. The book by Colonel Thompson, advertised page 172, will give you the best account of *Enharmonics*.

F. D. should not feel disappointed at the simplicity of the *Pendulum Metronomes*. The contrivance was suggested many years since by Dr. Crotch; and the improvement in those now advertised is, that the tape is marked with numbers at lengths to correspond with the marks of Mäzel's *Metronomes* generally found in printed music, and in the compactness of their cases. F. D. is in error to suppose that the beats of any pendulum get slower without altering its length; the first vibrations will cause the weight to travel over more space, but exactly the same time is occupied in arriving at the points of return. F. D. should ask the other questions of his music seller, they are of no interest to our readers.

### Brief Chronicle of the last Month.

CHOIR BENEVOLENT FUND, CHORAL FESTIVAL.—Permission has been given by the Sub-Dean of Westminster for the celebration of a Full Choral Service, in Westminster Abbey, by Members of the Cathedral and Collegiate Choirs, on Thursday, June 12th, for the purpose of Founding a Benevolent Society, on the Mutual Assurance principle, for the support of the Widows and Orphans of Organists and Lay Clerks who may be in distressed circumstances. At the conclusion of the Service, a Selection of